

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARY WALTER, ON BEHALF OF
HERSELF AND ALL OTHERS SIMILARLY SITUATED, Civil Action No. 2:16-cv-00523-CRE

JUDGE CYNTHIA REED EDDY

Plaintiffs,

v.

BABCOCK LUMBER, INC., A
PENNSYLVANIA CORPORATION, CARL
BORNTAEGER, INDIVIDUALLY,
COURTNEY BORNTAEGER,
INDIVIDUALLY, AND R. JEFFREY
KIMBALL, INDIVIDUALLY,

Defendants.

PLAINTIFFS' MOTION TO REMAND

And now come the Plaintiffs, Mary Walter ("Ms. Walter" or "Plaintiff"), on behalf of herself and all others similarly situated, by and through their attorneys, and file the within Motion to Remand.

1. Ms. Walter initiated this action in the Court of Common Pleas of Allegheny County by filing a Praecipe for Writ of Summons on April 2, 2015.
2. Thereafter, Ms. Walter filed a Complaint against Defendants on April 22, 2016.
3. Defendants filed a Notice of Removal in the United States District Court for the Western District of Pennsylvania on April 27, 2016.
4. In their Notice of Removal, Defendants assert that Plaintiffs' claims implicate the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et.*

seq. (“ERISA”).

5. On that basis, Defendants argue that Plaintiffs’ claims are removable on federal question grounds, citing 28 U.S.C. §§ 1331 and 1441(a).

6. This Court lacks jurisdiction to determine Ms. Walter’s claims, and those of the class, because the claims are not related to ERISA and are not preempted by federal law.

7. Thus, the matter cannot be removed and should be remanded to the Court of Common Pleas of Allegheny County.

8. Plaintiffs respectfully request this Court indefinitely extend the time for the parties to file briefs on the issues raised by this Motion while the parties attempt to settle the case.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order in the form attached that extends the time for briefs in this case until further Order of Court.

Respectfully submitted,

/s/ James W. Carroll, Jr.

James W. Carroll, Jr.
PA I.D. No. 21830
Ryan P. Stewart
PA I.D. No. 209185

Rothman Gordon, P.C.
310 Grant Street, Third Floor
Pittsburgh, PA 15219
(412) 338-1117 – phone
(412) 281-7304 – fax
jwcarroll@rothmangordon.com
rpstewart@rothmangordon.com
Attorneys for Plaintiffs